

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8132 of 1995

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

KHUMANSINGH H GOHIL

Versus

PRINCIPAL CHIEF CONSERVATOR OFFOREST

Appearance:

MS MEGHA JANI for Petitioner

None present for Respondent No. 1, 2

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 21/04/99

ORAL JUDGEMENT

1. The petitioner, a retired Range Forest Officer of the Forest Department of the Government of Gujarat, filed this petition before this Court and prayed for the directions to the respondents to pay all the retirementary benefits inclusive of pension and gratuity to him.

2. Learned counsel for the petitioner has given up

the challenge made by petitioner to the order dated 23rd March, 1995 at annexure 'E' (B).

3. The petitioner on attaining the age of superannuation superannuated from the Government services w.e.f. 1-4-1995. Thereafter he waited for reasonable period for passing necessary orders by the competent authority for sanction of pension pay order and gratuity pay order and when nothing has been done, he approached to this Court by filing this special civil application on 19-9-1995.

4. On 22-9-1995, this petition was placed on Board for admission, on which date the Court ordered for issuance of notice to the respondents returnable on 17th October, 1995. The notice appears to have been issued for the reason that looking to the nature of the case, the same may be decided at the admission stage. However, as usual, what I am seeing everyday in the Court, the State of Gujarat its functionaries and officers are not interested in defending the petitions filed against them in this Court, which is clearly borne out from the fact that in this case also reply to the special civil application has not been filed. Then the matter has come up for consideration in the Court on 21st December, 1995. As the reply to the special civil application had not been filed, the Court was left with no option except to admit this petition and place it for early disposal. The Court has further been pleased to order, "without prejudice to the rights and contentions of the parties, it is directed by way of this ad-interim order that the respondents shall quantify the amount of the petitioner's pension/provisional pension, gratuity and other retirement benefits in accordance with law within a period of one month from today. On 8th March, 1996, the Court passed the order, which reads as under:

The petitioner has superannuated on 1-4-1995. Before that by order dated 23-3-1995 a final order was made in a departmental inquiry which had been instituted against him which resulted in punishment of reduction of two stages of increments. It is not clear as to whether after his superannuation any inquiry was instituted against him under Rule 189A. In any event the petitioner would be entitled to retiral benefits even if there were such departmental inquiry already instituted having regard to Rule 189B. By way of interim relief, it is, therefore, directed that the respondent authorities will immediately consider the

question of grant of pension to the petitioner and take a decision within two weeks from today and the pension or provisional pension as may be payable to the petitioner may be paid to him in accordance with rules including Rule 189B as may be applicable in the case.

5. Learned counsel for the petitioner admits that in pursuance of the order of this court aforesaid, the petitioner started to get the provisional pension. Till 8th March, 1996, from the side of the respondents, reply to the special civil application has not been filed. The matter has come up for consideration before this Court on 10th October, 1997 on which date, neither the counsel for the petitioner nor the counsel for the respondents was present and the note filed by the petitioner for early listing of the matter has been granted and the matter has been ordered to be fix for hearing on 16th October, 1997. On 16th October, 1997, the matter was listed for final hearing and on behalf of the respondents Shri D.P. Joshi put appearance and he prayed for time to file reply to this special civil application. Though the court did not find it to be just and reasonable request from the side of the respondents still in the interest of justice last opportunity was granted to the respondents to file reply to the special civil application and the matter was ordered to be stand over to 2nd December, 1997. After 2nd December, 1997, it appears that the matter has been placed on Board on 22nd December, 1998. After 22nd December 1998, the matter has come up on Board today for final hearing. So after 16th October, 1997, the respondents though got more than 1 year and 5 months period, still they have not cared to file reply to the special civil application. The facts stated by the petitioner in the special civil application stands uncontroverted by the respondents and as such the same are to be taken to be admitted and accordingly the same are taken to be admitted.

6. The petitioner retired from the services on 1-4-1995. Prior to his retirement one chargesheet was there in which he has been given the penalty of withholding of two grade increments with permanent effect. On the day of retirement, against him, no departmental inquiry or any criminal case was pending. After retirement also within the permissible limitation as provided under Rule 189(B) of the Bombay Civil Services Rules, no inquiry has been initiated. So there is no justification to withheld his pension, gratuity and the amount of encashment of leave or other retirement benefits by the respondents. The prayer made by the

petitioner in this special civil application deserves to be granted.

7. In the result, this special civil application is allowed and the respondents are directed to pay to the petitioner all retirement benefits for which he is legally entitled within a period of two months from the date of receipt of writ of this order. The respondents are further directed to pay the interest on the amount of retirement benefits which are found to be payable to the petitioner at the rate of 15% p.a. from the due date till the date of payment thereof. The respondents are further directed to pay to the petitioner Rs.3000/- as costs of this petition what the counsel charged towards fees. Rule is made absolute in the aforesaid terms.

zgs/-